STATE OF MICHIGAN

COURT OF APPEALS

In re FLOTO, Minors.

UNPUBLISHED
December 10, 2015

No. 326710
Livingston Circuit Court
Family Division
LC No. 14-014789-NA

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Respondent mother appeals from the trial court order that terminated her parental rights to the minor children EF and BF. The court terminated respondent's parental rights to BF under MCL 712A.19b(3)(b)(*i*) (parent caused physical injury or physical or sexual abuse), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). The court terminated respondent's parental rights to EF under MCL 712A.19b(3)(g) and (j). Because the trial court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the children, we affirm.

A trial court must terminate a respondent's parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); see also MCL 712A.19b(5). On appeal, respondent does not challenge whether any of the statutory grounds under MCL 712A.19b(3) were established by clear and convincing evidence. Instead, the sole issue before us is whether the trial court erred in finding that termination was in the children's best interests. We review a trial court's best interests decision for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

"In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Here, the trial court relied on the best interests factors contained in MCL 722.23 of the Child Custody Act. While trial courts in a termination proceeding are not required to make findings on these specific MCL 722.23 factors, "it is entirely appropriate for a probate court to consider many of the

concerns underlying those best interests factors in deciding whether to terminate parental rights." *In re JS & SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998), overruled on other grounds *In re Trejo*, 341 Mich 341, 353-354; 612 NW2d 407 (2000). The trial court may also consider a respondent's unfavorable psychological evaluation and the children's ages. See *In re Jones*, 286 Mich App at 131. When making its best-interests determination, the court must consider whether the record as a whole proves by a preponderance of the evidence that termination is in the best interests of the child. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

Our review of the record does not leave us with a definite and firm conviction that the trial court erred. Respondent had a history of alcohol abuse, which continued to place the children in danger. Respondent admitted at the trial court to having a drinking problem. She characterized her drinking as "heavy drinking," which she says has progressed from 2009.

Respondent's drinking was the direct or indirect cause of several hospitalizations during the few years leading up to the termination hearing.

The first hospitalization occurred in the spring of 2013.[1] While staying at her parents' home, respondent in the middle of the night woke her children up, took her father's cell phone, and took her father's gun. Respondent then drove away with the children because she was delusional and paranoid that she and the children were in danger. After receiving a call from respondent, stating that she and the children were fine, her parents called 911 to report what had happened. Ultimately, a sheriff pulled respondent over, and respondent was taken to McPherson Hospital and then transferred to Chelsea Hospital. Notably, respondent testified that alcohol was not a factor for this incident; instead, she blamed her behavior on an adverse reaction to Adderall, which she was prescribed. Respondent further stated that her alcohol use was not even addressed at this hospitalization. However, the medical records indicate that respondent was told to not drink alcohol upon her discharge.

Respondent was next hospitalized in December 2013. Respondent was admitted due to bouts of severe, uncontrollable shaking. She testified that the shaking occurred after having "two drinks." She initially thought the shaking was either part of withdrawal symptoms or was a reaction to some medication. Later, she testified that the tremoring was a reaction to a mediation she was taking, Abilify. She stated that after her overnight stay at the hospital,[2] she was released with no diagnosis. Contrary to respondent's testimony, the medical records indicated that the only cause for her tremors was, indeed, alcohol withdrawal. She was admitted to the hospital solely due to "alcohol withdrawal treatment," and upon discharge, she was told to join an alcohol support group, to stay away from people or situations that make her drink, and in any event, to

[1] Respondent gave conflicting testimony regarding whether this occurred in the spring of 2012 or 2013. But the trial court later noted that the medical records indicated that it occurred in spring of 2013.

[2] Contrary to respondent's testimony, the medical records revealed that she was admitted on December 29, 2013, and discharged on December 31, 2013.

not drink alcohol. Her diagnosis was "alcohol withdrawal." Even after being told this information at the hospital, respondent did not consider stopping drinking.

Respondent's third hospitalization was at the University of Michigan.[3] Respondent testified that in February 2014, she was attacked and hit on her head, which led her to being admitted to the hospital and being diagnosed with post-traumatic stress disorder (PTSD). Respondent explained that while in her duplex in February 2014, she believes her landlord opened a door unannounced and attacked her, striking her in the head. However, respondent admits that she never saw who attacked her and was not sure if she was attacked or merely blacked out and hit her head. The trial court found that respondent was not attacked and instead passed out from drinking and hit her head. This finding is not clearly erroneous.

Respondent was next hospitalized from July 22 until August 1, 2014, at St. Joseph Mercy Hospital in Ann Arbor. Dr. Stephen Aronson treated respondent during this hospitalization and testified at trial. Dr. Aronson diagnosed respondent with the following conditions: major depressive disorder, idiosyncratic drug reaction to mediation after proper dose, alcohol abuse with alcohol-induced amnesia, alcohol-induced mood disorder, major depressive disorder recurrent, and alcohol abuse. Upon discharge, respondent was instructed to avoid all central nervous system depressants such as alcohol, begin treatment at Greenbrook Substance Abuse Treatment Center, and follow up with her psychiatrist, Dr. Matossian.

After being discharged, respondent did not follow up with any of the recommendations and, in fact, drank again. Respondent was readmitted back to St. Joseph's in Ann Arbor on August 7, 2014. She was discharged the following day. Upon discharge, she was prescribed Antabuse for alcohol dependence.

In addition to the five hospitalizations, there were other significant incidents leading up to the filing of the petition. In general terms, EF testified that respondent drank too much, which made life difficult for both EF and BF. Both children talked to respondent many times about her drinking, but nothing ever came from it. EF also testified that, related to respondent drinking "super frequently," she found respondent passed out on the floor numerous times. EF took it upon herself to police their living quarters and search for hidden alcohol and discard it.

Furthermore, there were two more serious allegations against respondent that appear to be related to her alcohol use. The first allegation involves respondent hitting BF with a baseball bat on two separate occasions. She pleaded no contest to these allegations at the adjudication hearing. While respondent's father did not witness any assault, he testified that on one occasion, after being called by the children,[4] he found respondent crying and rocking back and forth in bed while holding a baseball bat. Respondent's father thereafter took the bat away.

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[3] The medical records from this hospitalization were not admitted into evidence.

[4] At this time, respondent and the children were living at respondent's parents' home in the basement.

The other serious allegation involved respondent sexually assaulting BF. It was this incident that led to the filing of the petition for termination. On July 20, 2014, BF and EF were in the basement with respondent. While respondent was telling the children a story, BF reacted and cried, "It's you!," referring to respondent. BF then went upstairs, crying, and told his grandfather that two months earlier, while sleeping in bed with respondent, respondent touched his genital area and then took his hand and made him touch her genital area. The grandfather called 911, which led to petitioner's involvement and the filing of the instant petition on July 24, 2014. Notably, respondent pleaded no contest at the adjudication hearing to all the allegations related to the sexual assault.

Looking at the record as a whole, it is undeniable that respondent has a serious alcohol problem. In her own words, her alcohol use "escalated" and "progressed" over the past couple years leading up to the filing of the petition. Aside from the usual negatives one can expect from one who abuses alcohol, respondent also has engaged is some extremely dangerous behavior with respect to her children. Her alcohol abuse has led to her physically and sexually abusing her child BF. All the parties seem to agree that alcohol is root of nearly all of respondent's ills.

However, respondent claims that ever since being released from her latest hospitalization, she has not had any alcohol, which at the time of the termination hearing constituted six months of sobriety. We would agree with respondent that if alcohol indeed were completely removed from respondent's life, then termination may not be in the children's best interests. After all, if the major obstacle with respondent being able to properly parent is no longer present, then there is not a very compelling reason to terminate her rights. However, aside from respondent's self-serving testimony that she had been alcohol-free for six months, there was little in the record to support this assertion. In fact, the trial court specifically found respondent not credible. The court pointed out the many inconsistencies in respondent's testimony, which all served to minimize respondent's drinking. Generally, this Court defers to a trial court's ability to assess the credibility of witnesses. *McIntosh v McIntosh*, 282 Mich App 471, 474; 768 NW2d 325 (2009). One of the reasons such deference is warranted is because of the trial court's superior ability to assess a witness's demeanor. See *People v Snider*, 239 Mich App 393, 418; 608 NW2d 502 (2000).

But in this case, we do not have to simply defer to the trial court's subjective assessments because there is objective evidence on the record that respondent is not credible. Respondent continually downplayed the effect alcohol had on her hospitalizations and even asserted that for some of her hospitalizations, alcohol was not a factor whatsoever. As described earlier, the medical records show that this was not the case. Further, respondent testified at trial on February 17, 2015, that her psychiatrist, Dr. Matossian, declared that she was disabled and could not work. As a result, she claimed that she was receiving disability payments every month from her prior employer's insurance company. However, the medical records show that Dr. Matossian declared respondent no longer disabled and fit for work as of June 30, 2014. Additionally, respondent testified that her sobriety date was August 9, 2014, which she called her "birth date" due to its alleged significance. But later, she surmised that her actual sobriety date was August 7, 2014. Respondent's flippant treatment of this "important" date tends to show how her testimony is not credible.

Aside from respondent's patent credibility issues, there are red flags surrounding her supposed sobriety. Respondent testified that she resists going to counseling therapy because she finds that it is not helpful. And although she stated that she attends Alcoholics Anonymous (AA), she did not have a sponsor, and she started a romantic relationship with a man who works at a liquor distributorship, even though it was suggested that people at AA should not enter relationships until after a year of sobriety. Respondent testified that she was not aware of that guideline. Also, while respondent was prescribed Antabuse after her last hospitalization, she testified that she no longer was taking it. The preceding casts serious doubt over whether any sobriety will have any lasting effect.

In sum, there is nothing in the record to give any sense of security that respondent's sobriety actually exists and, even if it does exist, that it will last. As a result, because it is clear from the record that respondent's sobriety is tenuous at best, we hold that the trial court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien